

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### TRIBAL AND STATE RELATIONS COMMITTEE

Monday, September 17, 2007  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Merle Boucher, Dawn Marie Charging; Senators Stanley W. Lyson, Tim Mathern, Dave Oehlke

**Member absent:** Representative Duane L. DeKrey

**Native American Citizens' Task Force Members present:** Cheryl Kulas, Executive Director, Indian Affairs Commission; Jesse Taken Alive, Standing Rock Sioux Tribe; Marcus Wells, Jr., Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation

**Native American Citizens' Task Force Members absent:** David Brien, Chairman, Turtle Mountain Band of Chippewa Indians; Myra Pearson, Chairman, Spirit Lake Nation; Michael Selvage, Sr., Chairman, Sisseton-Wahpeton Oyate

**Others present:** See [Appendix A](#)

Committee counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

Committee counsel reviewed a background memorandum entitled [Tribal and State Relations Committee - Background Memorandum](#). The memorandum discusses the committee's responsibilities, federal Indian law and policy, state-tribal relations, state-tribal cooperative agreements, and 2007 legislation relating to Indian issues. Committee counsel also distributed a booklet published by the National Conference of State Legislatures and the National Congress of American Indians entitled *Government-to-Government: Understanding State and Tribal Governments* and a document published by the National Conference of State Legislatures entitled *Transportation Planning on Tribal Lands*. Copies of these documents are on file in the Legislative Council office. Committee counsel also distributed a letter from Mr. Ken Sorenson, Assistant Attorney General, regarding tribal police officer licensing, a copy of which is attached as [Appendix B](#).

#### ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

Chairman Boucher recognized Mr. Nathan A. Berseth, Director, American Indian Business Development Office, Department of Commerce, Fargo. Mr. Berseth discussed the American Indian

Business Development Office and economic development initiatives in Indian country. He distributed a progress report ([Appendix C](#)) and schedule of active client projects ([Appendix D](#)). He said two procurement assistance centers were consolidated in July and there are now procurement assistance centers in Bismarck, Belcourt, Dickinson, Fargo, Fort Yates, and New Town. He said the American Indian Business Development Office contracts with the small business development centers located on the state's reservations. He said the North Dakota American Indian Business Development Office has 152 clients registered for 1,782 hours of services with its programs through May 2006. He said this represents 90 percent of the current 8(a) certified companies in North Dakota and 70 percent of the companies registered as owned by Native Americans. He said 70 percent of these clients were referred by current clients or partner agencies. He said the office has been able to attract \$20.3 million in contracts in the last one and one-half years.

In response to a question from Representative Charging, Mr. Berseth said there are presently thirty-four 8(a) companies registered with the Small Business Administration in North Dakota.

In response to a question from Ms. Kulas, Mr. Berseth said approximately 50 percent of the 8(a) companies in North Dakota are involved in defense procurement.

In response to a question from Representative Charging, Mr. Berseth said he is not aware of any proposed changes in the federal 8(a) program.

In response to a question from Representative Charging, Mr. Berseth said approximately 80 percent of his time is spent on minority-owned business in which 50 percent of his time involves travel, and 80 percent of the agency's funding is for nonminority-owned companies.

Mr. Bob Humann, Senior Vice President of Lending, Bank of North Dakota, addressed the committee concerning the tribal-state loan guaranty program and economic development initiatives in Indian country. He said 2007 House Bill No. 1503 extended the tribal-state loan guaranty program. He said the legislation is designed to authorize the Bank of North Dakota to provide a guaranty for a non-Native American that is doing business with a Native American-owned or tribally owned business. He said if there is a contract or payment dispute between the

two parties, the Bank would satisfy the obligation and pursue litigation after the payment is made. The next step, he said, is for the Bank to finalize its policy regarding the program which should be completed in October and then the marketing program for the program will begin in December.

In response to a question from Representative Boucher, Mr. Humann said the intent of the legislation is to encourage non-Native American-owned businesses to do business with Indian-owned and tribally owned businesses.

### **TAXATION IN INDIAN COUNTRY**

Mr. Dan Rouse, Legal Counsel, Tax Department, addressed the committee concerning tribal fuel tax agreements. He said federal courts are narrowing the extent to which states can tax activity within the exterior boundaries of Indian reservations within the states in which they are located. He said the North Dakota Supreme Court has not directly addressed the issue; however, the court has said that if it were to address the issue it is unlikely to determine that the state can tax a transaction within the exterior boundaries of an Indian reservation. As a result of this case, he said, the Legislative Assembly enacted North Dakota Century Code Section 47-43.1-03.2 to provide for fuel tax refunds for fuel purchased by Native Americans. He said the refund scheme contained in Section 57-43.1-03.2 is similar to that used for agricultural purchasers.

Mr. Rouse said the Tax Commissioner's office and the Standing Rock Sioux Tribe have had a long-standing, successful government-to-government relationship. Under this agreement, he said, the Tax Commissioner's office is a contractor for the Standing Rock Sioux Tribe and collects and administers its tribal fuels and cigarette taxes. He said the office determines the amount attributable to tribal purchases, collects a small fee, and remits the balance to the tribe.

Mr. Rouse said the Spirit Lake Nation was aware of the relationship between the Tax Commissioner's office and the Standing Rock Sioux Tribe and the tribal chairman approached the department concerning collection of fuels taxes on the Fort Totten Indian Reservation. He said the Spirit Lake Nation has ordinances in place that mirror the state's and the state has just completed a one-year relationship with that tribe.

During the summer of 2007, Mr. Rouse said representatives of the Three Affiliated Tribes approached the Tax Commissioner's office concerning collection of that tribe's fuels taxes. He said the Three Affiliated Tribes had the requisite ordinances in place and thus entered an agreement with the state. He said the Governor has approved the agreement and beginning October 1, 2007, the Tax Commissioner's office will begin collecting fuels taxes for the tribe.

Mr. Rouse said before the Tax Commissioner's office can collect taxes under an agreement, the agreement must be approved by the Governor. He

said the Governor requires the agreement be a written agreement that the state would administer and collect the tax for a fee and base the distribution of the revenue on the latest United States census data available for the reservation.

Mr. Rouse said representatives of the Turtle Mountain Band of Chippewa Indians have approached the Tax Commissioner's office concerning an agreement for that reservation. However, he said, the tribe does not have the requisite ordinances in place. He said the tribe is working on these ordinances and once these ordinances are in place the Tax Commissioner's office can enter into negotiations with the tribe.

In response to a question from Ms. Kulas, Mr. Rouse said that under the prior refund scheme individual Native Americans could claim fuels tax refunds. However, under tribal agreements, he said, the funds are remitted to the tribe and there is no mechanism for refunds to be made to individual tribal members. He said whether refunds should be made to individual tribal members on reservations that have agreements with the Tax Commissioner's office is an internal matter for the tribe.

In response to a question from Representative Charging, Mr. Rouse agreed that the prior process of individual refunds did not work very well. He said there was no good way to identify an enrolled member or nonenrolled member at the point of purchase. Thus, he said, the enrolled member had to provide the department with receipts showing the amount of fuel purchased and the tax paid. He said this recordkeeping process was very cumbersome, not consumer friendly, and oftentimes the receipt did not show the amount of tax paid so the enrolled member would have to request a separate receipt showing the amount of tax paid.

In response to a further question from Representative Charging, Mr. Rouse said the Supreme Court has determined that the refund provisions are retroactive to six years from the time the case was filed which would allow refunds back to 1997.

In response to a question from Mr. Taken Alive, Mr. Rouse said the state-tribal tax agreements must be reviewed every 10 years. He said this is in conjunction with the federal decennial census. Also, he said, each agreement contains a provision calling for discussions before termination of an agreement.

Mr. Ryan Bernstein, Legal Counsel, Governor's office, addressed the committee. He discussed the tribal fuels tax agreement with the Three Affiliated Tribes and negotiations with the Three Affiliated Tribes relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Indian Reservation. He said the Governor recently signed the fuels tax agreement with the Three Affiliated Tribes. He said the Governor is very pleased with the agreement and the agreement is uniform with the other tribal fuels tax agreements.

Mr. Bernstein said the Governor's office has had four meetings with the Three Affiliated Tribes concerning taxation and regulation of oil and gas produced on the tribe's reservation. He said these meetings have been very productive and the Governor's office is working on a rough draft of an agreement. He said the Governor is using several guidelines in negotiations with the Three Affiliated Tribes. He said the agreement must result in additional revenue for both the state and the tribe and promote drilling and oil and gas production on the Fort Berthold Indian Reservation. He said the agreement must provide economic development for the Three Affiliated Tribes and result in better paying jobs on the reservation and the agreement must maintain and recognize tribal sovereignty. Issues that still need to be resolved, he said, include Tribal Employment Rights Office issues, the length of the agreement, and the regulatory scheme under which exploration and production will occur on the reservation.

In response to a question from Senator Mathern, Mr. Bernstein said any agreement with the Three Affiliated Tribes under 2007 Senate Bill No. 2419 only applies to the Three Affiliated Tribes and the Fort Berthold Indian Reservation.

### **TRIBAL-STATE NATURAL RESOURCE ISSUES**

Mr. Randy Kreil, Division Chief, Wildlife Division, Game and Fish Department, addressed the committee concerning the taking of mountain lions on the Fort Berthold Indian Reservation. He said the Game and Fish Department has been working with the Three Affiliated Tribes for approximately three years on mountain lion issues. He said the state and tribe are sharing biological information concerning mountain lions which is adding a great deal to the knowledge concerning mountain lions in the state.

### **INDIAN EDUCATION ISSUES**

Mr. Michel Hillman, Vice Chancellor for Academic and Student Affairs, North Dakota University System, addressed the committee concerning grant assistance payments concerning tribally controlled community colleges. He distributed copies of two proposed State Board of Higher Education policies concerning tribal college assistance grants which are attached as [Appendix E](#) and [Appendix F](#). Mr. Hillman said the program was enacted by the Legislative Assembly to recognize the benefit provided to nonenrolled members by tribal colleges in the state.

Chairman Boucher recognized Mr. Taken Alive. Mr. Taken Alive said the committee should explore developing a policy statement or resolution to support the state's tribes in enforcing federal treaty obligations with the United States.

### **WATER ISSUES**

Mr. Todd Sando, Assistant State Engineer, State Water Commission, addressed the committee

concerning implementation of the emergency drinking water program. He said the program is designed to assist communities, tribes, and rural water systems to obtain water from the Missouri River system, which includes the main stem of the Missouri River, Lake Sakakawea, and Lake Oahe. He said the water intake issues at Garrison and Mandaree have been resolved. He said the Bureau of Reclamation is lowering water intakes at Twin Buttes, Four Bears, and White Shield. Thus, he said, there have not been any requests for emergency water supply projects since the 2007 Legislative Assembly adjourned.

In response to a question from Representative Charging, Mr. Sando said the State Engineer's office has not yet determined whether to adopt rules to implement the emergency drinking water program or to do so through policy whereby the State Engineer would make recommendations to the State Water Commission for funding individual projects. Mr. Sando said regardless of whether it is done by rule or policy, the State Engineer's office and State Water Commissioner will do whatever is necessary to see that the citizens of North Dakota have safe drinking water available to them.

### **CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY**

Mr. Mike R. Schwindt, Director, Child Support Enforcement, Department of Human Services, addressed the committee concerning child support enforcement in Indian country. A copy of his written comments is attached as [Appendix G](#). He updated the committee on interactions between the tribes and the state on child support enforcement services.

In response to a question from Representative Boucher, Mr. Schwindt said although the Three Affiliated Tribes has a startup project that is well on the way to becoming operational, the timeline for the state's three remaining tribes--the Turtle Mountain Band of Chippewa Indians, Spirit Lake Nation, and Standing Rock Sioux Tribe--depends upon tribal initiative.

In response to a question from Representative Charging, Mr. Schwindt said the Three Affiliated Tribes has an agreement with the federal government for federal funding of the tribe's child support enforcement program. He said 16 tribal programs are federally funded and an additional 31 have applied for federal funding. He said the Sisseton-Wahpeton Oyate also has a federally funded child support enforcement program.

In response to a question from Ms. Kulas, Mr. Schwindt said once an obligor is in arrearage, there is no forgiveness of the arrearage unless the obligation is determined to be in error.

In response to a question from Representative Boucher, Mr. Schwindt said there may be a number of duplicate child support orders but very few would be in operation at the same time.

## **EMERGING ISSUES RELATING TO TRIBAL AND STATE RELATIONS**

Chairman Boucher recognized Ms. Kulas. Ms. Kulas discussed emerging issues relating to tribal and state relations. She said these issues include education, health care, transportation, labor and employment, and long-term care. She said Indian education issues are not really an emerging issue but a continuing issue and the issue of achievement of Indian children in schools continues to be a challenge. She said jurisdiction issues are a concern as a number of state and federal entities have jurisdiction over Indian education and there needs to be a mechanism to facilitate various agencies working together to benefit Indian children.

Ms. Kulas said another emerging issue affecting Native Americans is the declining support for health care. She said the Indian Health Service has been continuously underfunded.

Concerning transportation issues, Ms. Kulas said the Bureau of Indian Affairs has a contract with the Federal Highway Administration to train large equipment drivers and truckdrivers in North Dakota. She said the tribes would like to do the training but are having difficulty obtaining Department of Transportation certification for the program. She said

this is an emerging issue facing the state's Indian tribes.

Ms. Kulas said another emerging issue that the committee needs to be aware of is long-term care. She said the state's Native American population, just as the state's population as a whole, is facing issues of concern to the elderly.

## **STAFF DIRECTIVES**

In response to a question from Senator Mathern, Ms. Kulas said the Indian Affairs Commission will provide a history of the agency, including a history of the agency's budget at the next committee meeting.

In response to a question from Representative Charging, Ms. Kulas said her update will include information on the Indian education specialist added to the agency by the 60<sup>th</sup> Legislative Assembly.

No further business appearing, Chairman Boucher adjourned the meeting at 2:30 p.m.

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:7